

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

DONALD ISAAC JOHNSON,

Plaintiff,

V.

STATE OF WASHINGTON, PIERCE COUNTY, CITY OF TACOMA, PIERCE COUNTY JAIL, PIERCE COUNTY JAIL STAFF, CORRECTIONAL OFFICER SHULTZ, PIERCE OCUNTY SUPERIOR COURT JUDICIARY, DEPARTMENT OF ASSIGNED COUNSEL, BRYCE NELSON, CITY OF LAKEWOOD, LAKEWOOD POLICE DEPARTMENT, KENNETH HENSON, and ANDREW GILDEHAUS,

Defendants.

No. C12-5818 RBL/KLS

ORDER TO AMEND OR SHOW CAUSE

This matter has been referred to Magistrate Judge Karen L. Strombom pursuant to 28 U.S.C. § 636(b)(1), Local Rules MJR 3 and 4. Plaintiff has been granted leave to proceed *in forma pauperis*. Presently before the Court for review is Plaintiff's proposed civil rights complaint. ECF No. 3. The Court will not direct service of Plaintiff's complaint at this time because it is deficient, as is explained in further detail below. Plaintiff will be given an opportunity to show cause why his complaint should not be dismissed for failure to state a claim under 42 U.S.C. § 1983.

DISCUSSION

Under the Prison Litigation Reform Act of 1995, the Court is required to screen complaints brought by prisoners seeking relief against a governmental entity or officer or

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1 employee of a governmental entity. 28 U.S.C. § 1915A(a). The court must dismiss a complaint
2 or portion thereof if the prisoner has raised claims that are legally “frivolous or malicious,” that
3 fail to state a claim upon which relief may be granted, or that seek monetary relief from a
4 defendant who is immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); See
5 *Barren v. Harrington*, 152 F.3d 1193 (9th Cir. 1998).

6 A complaint is legally frivolous when it lacks an arguable basis in law or fact. *Neitzke v.*
7 *Williams*, 490 U.S. 319, 325 (1989); *Franklin v. Murphy*, 745 F.2d 1221, 1227-28 (9th Cir.
8 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. *Neitzke*,
10 490 U.S. at 327. A complaint or portion thereof, will be dismissed for failure to state a claim
11 upon which relief may be granted if it appears the “[f]actual allegations . . . [fail to] raise a right
12 to relief above the speculative level, on the assumption that all the allegations in the complaint
13 are true.” See *Bell Atlantic, Corp. v. Twombly*, 127 S.Ct. 1955, 1965 (2007) (citations omitted).
14 In other words, failure to present enough facts to state a claim for relief that is plausible on the
15 face of the complaint will subject that complaint to dismissal. *Id.* at 1974.

16 Although complaints are to be liberally construed in a plaintiff’s favor, conclusory
17 allegations of the law, unsupported conclusions, and unwarranted inferences need not be
18 accepted as true. *Jenkins v. McKeithen*, 395 U.S. 411, 421 (1969). Neither can the court supply
19 essential facts that an inmate has failed to plead. *Pena*, 976 F.2d at 471 (quoting *Ivey v. Board of*
20 *Regents of Univ. of Alaska*, 673 F.2d 266, 268 (9th Cir. 1982)). Unless it is absolutely clear that
21 amendment would be futile, however, a pro se litigant must be given the opportunity to amend
22 his complaint to correct any deficiencies. *Noll v. Carlson*, 809 F.2d 1446, 1448 (9th Cir. 1987).
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1 Under Rule 8(a)(2) of the Federal Rules of Civil Procedure, “the complaint [must
2 provide] ‘the defendant fair notice of what the plaintiff’s claim is and the ground upon which it
3 rests.’” *Kimes v. Stone* 84 F.3d 1121, 1129 (9th Cir. 1996) (citations omitted). In addition, in
4 order to obtain relief against a defendant under 42 U.S.C. § 1983, a plaintiff must prove that the
5 particular defendant has caused or personally participated in causing the deprivation of a
6 particular protected constitutional right. *Arnold v. IBM*, 637 F.2d 1350, 1355 (9th Cir. 1981).
7 To be liable for “causing” the deprivation of a constitutional right, the particular defendant must
8 commit an affirmative act, or omit to perform an act, that he or she is legally required to do, and
9 which causes the plaintiff’s deprivation. *Johnson v. Duffy*, 588 F.2d 740, 743 (9th Cir. 1978).

10 Plaintiff purports to sue various Lakewood Police officers, the State of Washington,
11 Pierce County, the Cities of Lakewood and Tacoma, the Pierce County Jail, the Pierce County
12 Superior Courts, the Department of Assigned Counsel, and the Prosecuting Attorney, all in
13 connection with an on-going criminal case, Case No. 12-1-01235-2 in Pierce County Superior
14 Court. ECF No. 3. Plaintiff claims that he is being falsely accused, that he was kidnapped by
15 Lakewood police officers, illegally transported from Lakewood to Tacoma, is being maliciously
16 prosecuted, slandered, was sprayed with pepper spray, and is being subjected to improper
17 procedures and cruel and unusual punishment. *Id.* Plaintiff previously filed an almost identical
18 lawsuit against these same parties on September 12, 2012 in Case No. C12-5818RBL. In that
19 case, the Court has declined to serve his complaint because it is deficient. See ECF No. 6 (Order
20 to Show Cause). The Court explained in some detail why Plaintiff’s complaint was deficient and
21 has ordered him to show cause why his complaint should not be dismissed or alternatively, given
22 Plaintiff until October 26, 2012 to submit an amended complaint that states a viable complaint
23 under 42 U.S.C. Section 1983.

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This action is duplicative and cannot be maintained. Plaintiff must explain to this Court why this case should not be dismissed.

Due to the deficiencies described above, the Court will not serve the complaint. Plaintiff may file an amended complaint curing, if possible, the above noted deficiencies, or show cause explaining why this matter should not be dismissed no later than **October 26, 2012**. If Plaintiff chooses to amend his complaint, he must demonstrate how the conditions complained of have resulted in a deprivation of his constitutional rights. The complaint must allege in specific terms how each named defendant is involved. The amended complaint must set forth all of Plaintiff's factual claims, causes of action, and claims for relief. Plaintiff shall set forth his factual allegations **in separately numbered paragraphs** and shall allege with specificity the following:

- (1) the names of the persons who caused or personally participated in causing the alleged deprivation of his constitutional rights;
- (2) the dates on which the conduct of each Defendant allegedly took place; and
- (3) the specific conduct or action Plaintiff alleges is unconstitutional.

An amended complaint operates as a complete substitute for (rather than a mere supplement to) the present complaint. In other words, an amended complaint supersedes the original in its entirety, making the original as if it never existed. Therefore, reference to a prior pleading or another document is unacceptable – once Plaintiff files an amended complaint, the original pleading or pleadings will no longer serve any function in this case. *See Loux v. Rhay*, 375 F.2d 55, 57 (9th Cir. 1967) (as a general rule, an amended complaint supersedes the prior complaint). Therefore, in an amended complaint, as in an original complaint, each claim and the involvement of each defendant must be sufficiently alleged.

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1 Plaintiff shall present his complaint on the form provided by the Court. The amended
2 complaint must be **legibly rewritten or retyped in its entirety**, it should be an original and not a
3 copy, it may not incorporate any part of the original complaint by reference, and it must be
4 clearly labeled the “Amended Complaint” and must contain the same cause number as this case.
5 Plaintiff should complete all sections of the court’s form. Plaintiff may attach continuation
6 pages as needed but may not attach a separate document that purports to be his amended
7 complaint. **Plaintiff is advised that he should make a short and plain statement of claims
8 against the defendants. He may do so by listing his complaints in separately numbered
9 paragraphs. He should include facts explaining how each defendant was involved in the
10 denial of his rights.**

12 The Court will screen the amended complaint to determine whether it contains factual
13 allegations linking each defendant to the alleged violations of Plaintiff’s rights. The Court will
14 not authorize service of the amended complaint on any Defendant who is not specifically linked
15 to the violation of Plaintiff’s rights.

17 If Plaintiff decides to file an amended civil rights complaint in this action, he is cautioned
18 that if the amended complaint is not timely filed or if he fails to adequately address the issues
19 raised herein on or before **October 26, 2012**, the Court will recommend dismissal of this action
20 as frivolous pursuant to 28 U.S.C. § 1915 and the dismissal will count as a “strike” under 28
21 U.S.C. § 1915(g). Pursuant to 28 U.S.C. § 1915(g), enacted April 26, 1996, a prisoner who
22 brings three or more civil actions or appeals which are dismissed on grounds they are legally
23 frivolous, malicious, or fail to state a claim, will be precluded from bringing any other civil
24 action or appeal in forma pauperis “unless the prisoner is under imminent danger of serious
25 physical injury.” 28 U.S.C. § 1915(g).

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1 **The Clerk is directed to send Plaintiff the appropriate forms for filing a 42 U.S.C.**
2 **1983 civil rights complaint and for service. The Clerk is further directed to send a copy of**
3 **this Order and a copy of the General Order to Plaintiff.**

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5 **DATED** this 1st day of October, 2012.

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8 Karen L. Strombom
9 United States Magistrate Judge

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